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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT TACOMA

11 SCARLETT VERMILLION,

12 Plaintiff,

13 v.

14 LACEY POLICE DEPARTMENT AND
15 CITY OF LACEY, CHRIS PACKARD,
16 and THURSTON COUNTY,

17 Defendants.

CASE NO. 3:17-cv-05514-RJB

SECOND ORDER ON
DEFENDANT CITY OF LACEY
AND LACEY POLICE
DEPARTMENT'S MOTION FOR
SUMMARY JUDGMENT

18 THIS MATTER comes before the Court on Defendant City of Lacey and Lacey Police
19 Department's Motion for Summary Judgment. Dkt. 39. The Court has considered the motion and
20 the remainder of the file herein.

21 The narrow issue presented by the motion is whether the City of Lacey was involved with
22 Plaintiff's negative encounter with law enforcement on July 4, 2014. Because there has been no
23 showing that any City of Lacey entity or agent, including the Lacey Police Department, was
24 involved with the incident, summary judgment of dismissal should be granted.

1 BACKGROUND

2 **A. The Amended Complaint and named parties.**

3 Plaintiff e-filed her 28 U.S.C. §1983 Complaint on July 5, 2017, the last day to file the
4 case under the applicable three year statute of limitations, given the July 4th holiday. Dkts. 1-2, 1-
5 9. *See discussion*, Dkt. 24 at 3-6. The Complaint named as defendants Lacey Police Department
6 and “Chris Packard c/o Lacey Police Department,” both with the same mailing address of 420
7 College St. SE, Lacey, Washington. Dkt. 1-2 at 1.

8 On November 2, 2017, the Court issued an Order finding that “Lacey Police Department”
9 was not a proper defendant. Dkt. 24 at 8. The Court gave Plaintiff the opportunity to file an
10 amended complaint naming the City of Lacey, not Lacey Police Department, as a defendant. *Id.*
11 Plaintiff filed the Amended Complaint on November 20, 2017. Dkt. 28. The Amended
12 Complaint names a defendant, “Lacey Police Department and City of Lacey,” as one entity
13 (hereinafter, “The City of Lacey Defendant”). Dkt. 28 at 2. Also named are “Chris Packard c/o –
14 Officer,” and “Thurston County a Political subdivision of the State of WA (Sheriff’s Depart.).”
15 *Id.* The Amended Complaint alleges substantially the same set of facts about the July 4, 2014 law
16 enforcement incident. *See* Dkts. 1-2 and 28.

17 **B. The City of Lacey Defendant’s Motion for Summary Judgment.**

18 The City of Lacey Defendant filed its Motion for Summary Judgment on December 7,
19 2017. Dkt. 39. The motion seeks summary judgment of dismissal on the basis that no City of
20 Lacey officer or entity was in any way involved in the July 4, 2014 incident. The City of Lacey
21 Defendant substantiated its motion with the declaration of Joe Upton, Commander with the
22 Lacey Police Department, who represented under penalty of perjury that, after a thorough review
23 of all Lacey Police Department records, “I have determined that no Lacey Police Department
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1 officers were involved in any way with the July 4, 2014 incident.” Dkt. 40 at 1. A detailed 911
2 log for a July 4, 2014 police event references Chris Packard (*id.* at 3) and Plaintiff (*id.* at 4), but
3 not the Lacey Police Department. The City of Lacey Defendant also referred the Court to a
4 declaration by Chris Packard, a named defendant, who stated that since 2012 he has been
5 continuously employed with Thurston County Sherriff’s Office. Dkt. 35 at 1.

6 On January 3, 2018, after the both the Court and the City of Lacey Defendant warned
7 Plaintiff of the consequences for failing to respond to a motion for summary judgment, Dkt. 39 at
8 1; Dkt. 43), Plaintiff filed a Response to another pending motion for summary judgment. Dkt. 44
9 at 1. Plaintiff filed a Response to the City of Lacey Defendant’s motion for summary judgment
10 in paper format on January 16, 2018, but the pleading was not processed by the Clerk’s Office
11 until after the Court had already granted the City of Lacey Defendant’s motion for summary
12 judgment, on January 24, 2018. Dkt. 52.

13 Two days later, on January 26, 2018, the Court vacated its Order and considered the
14 merits of Plaintiff’s Response. Dkt. 57 at 1. The Court construed the pleading as a request for
15 additional time to supplement the record in opposition to the motion. *Id.* at 2. The Court gave
16 Plaintiff a deadline of February 12, 2018, to file supplemental materials. At Plaintiff’s request,
17 the Court extended the deadline to February 26, 2018. Dkt. 71. The City of Lacey Defendant has
18 supplemented their showing with a City of Lacey map and accompanying declaration, to show
19 that the July 4, 2014 incident occurred in unincorporated Thurston County, not within the City of
20 Lacey. Dkt. 83.

21 **C. Plaintiff’s showing.**

22 As relevant to the issue presented, whether the City of Lacey was involved with the July
23 4, 2014 incident, Plaintiff has stated in prior pleadings, “I am just not that knowledgeable in all
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1 the different departments and ranks of the law enforcement . . . I also believe that the Lacey
2 Police Department was in fact present that day [of July 4, 2014].” Dkt. 44 at 6.

3 Since Plaintiff’s request for an extension of time, Plaintiff has made multiple filings, all
4 of which the Court has considered. Plaintiff has not requested more time for discovery. Plaintiff
5 has not filed any police reports, affidavits, or other evidence, other than her own declarations
6 relevant to the issue at hand. In an unsworn (but signed) statement, Plaintiff avers:

7 As discussed prior to this date, there is still yet another report out there, at least one, that
8 time after time of me politely requesting . . . [has been] denied, time after time . . . There
9 are many men and women with access in certain positions in this county whom have
adamantly refused to come forward with this information. Until this record surface then
perhaps we can dismiss the Lacey Police Department being a part of the July 4th
incident[.]

10 . . .
11 I believe that Lacey Police Department was involved in the July 4th incident. There were
12 many police vehicles not all were marked Sheriffs, at minimal they were there in support
and taking witnesses’ accounts of what happened. There was more than just one area the
Officers were in. This incident also happened in the City of Lacey . . . There is evidence
13 it happened in the City of Lacey, WA is involved and has a responsibility and duty as
well. [sic]

14 Dkt. 75 at 1. In another unsworn statement, Plaintiff states that the Lacey Police Department and
15 the City of Lacey were “at the scene of the said [sic] incident that involved Ms. Vermillion.”
16 Dkt. 76 at 1, 2.

17 STANDARD FOR SUMMARY JUDGMENT

18 Summary judgment is proper only if the pleadings, the discovery and disclosure materials
19 on file, and any affidavits show that there is no genuine issue as to any material fact and that the
20 movant is entitled to judgment as a matter of law. Fed.R.Civ.P. 56(c). The moving party is
21 entitled to judgment as a matter of law when the nonmoving party fails to make a sufficient
22 showing on an essential element of a claim in the case on which the nonmoving party has the
23 burden of proof. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1985). A genuine dispute over a
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1 material fact exists if there is sufficient evidence supporting the claimed factual dispute,
2 requiring a judge or jury to resolve the differing versions of the truth. *Anderson v. Liberty Lobby,*
3 *Inc.*, 477 U.S. 242, 253 (1986); *T.W. Elec. Service Inc. v. Pacific Electrical Contractors*
4 *Association*, 809 F.2d 626, 630 (9th Cir. 1987); *Matsushita Elec. Indus. Co. v. Zenith Radio*
5 *Corp.*, 475 U.S. 574, 586 (1986).

6 DISCUSSION

7 In support of the City of Lacey Defendant's position that no City of Lacey entity or agent
8 was involved with the July 4, 2014 incident, the City of Lacey Defendant has submitted or relied
9 upon the following evidence: (1) a 911 log for the July 4, 2014 incident, which documents the
10 law enforcement officers and entities at the incident; (2) the declaration of Lacey Police
11 Department Commander, John Upton, who has reviewed records for involvement by Lacey
12 Police Department; (3) the declaration of Chris Packard, who states he works for Thurston
13 County, not the City of Lacey; and (4) a map showing the location of the incident as
14 unincorporated Thurston County, not the City of Lacey. Viewed as a whole, this evidence is
15 overwhelming.

16 The evidence is also not refuted by Plaintiff, other than by Plaintiff's unsworn statements,
17 which offered her beliefs, but not facts. In light of all the evidence, this is not enough. Plaintiff
18 has been given more than ample opportunity to seek discovery and does not now seek additional
19 time. She offers no theory about why the evidence in the record errs and makes no showing of
20 what additional discovery could show.

21 On this record, the Court finds no issue of material fact about whether the City of Lacey
22 was involved with the July 4, 2014 incident. The motion for summary judgment of dismissal
23 should be granted and the City of Lacey Defendant dismissed.

* * *

THEREFORE, it is HEREBY ORDERED:

Defendant City of Lacey and Lacey Police Department's Motion for Summary Judgment (Dkt. 39) is HEREBY GRANTED. The claims against the City of Lacey Defendant (named "Lacey Police Department and City of Lacey") are DISMISSED.

IT IS SO ORDERED.

The Clerk is directed to send uncertified copies of this Order to all counsel of record and to any party appearing *pro se* at said party's last known address.

Dated this 8th day of March, 2018.

A handwritten signature in black ink, reading "Robert J. Bryan", written over a horizontal line.

ROBERT J. BRYAN
United States District Judge